

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**EMPLOYERS MUTUAL CASUALTY COMPANY
and EMCASCO INSURANCE COMPANY**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:05CV272LS

**EVELYN K. GOERS, CHERYL GOERS and
UNION PLANTERS NATIONAL BANK**

DEFENDANTS

ORDER

This matter came before the court on the Motion of Richard T. Bennett, Subpoenaed Witness, for Protective Order, or, in the Alternative, to Quash Subpoena. This matter is set for a hearing on September 15, 2006, on a Motion to Enforce Settlement filed by the Plaintiffs. The settlement that is the basis for this Motion was allegedly reached during a mediation conducted by Mr. Bennett. Bennett now invokes Unif. Local R. 83.7, which protects communications made in connection with mediation proceedings from disclosure, as precluding his testimony.

This Rule, which was adopted by this court in order to promote alternative dispute resolution, is subject to certain limitations. Specifically, Rule 83.7(K)(4)(a) permits disclosure of otherwise confidential information related to a mediation in order to “prevent a manifest injustice.” As the events that occurred during the mediation are at the crux of this Motion, it would be manifestly unjust to deprive the Plaintiffs of Bennett’s testimony and evidence if either is critical to their ability to prove that a settlement was reached. Thus, the court is of the opinion that Bennett should make himself and his files available for the hearing. That being said, the court will make every effort to protect Bennett from testifying, or from producing his records, if it appears during the hearing that his evidence or testimony would be cumulative or is available from another source. However, in the

likely event that his testimony and evidence are required, the court is of the opinion that Bennett must attend and bring his files that are related to this matter.

IT IS, THEREFORE, ORDERED that the Motion of Richard T. Bennett, Subpoenaed Witness, for Protective Order, or, in the Alternative, to Quash Subpoena, is hereby **denied**.

IT IS SO ORDERED, this the 12th day of September, 2006.

S/James C. Sumner

UNITED STATES MAGISTRATE JUDGE